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| 09/440,148 | 11/15/1999 | YIWEI THOMAS HOU | 35400/PYI/F1 | 2594 |

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EXAMINER

EMDADI, KAMRAN

ART UNIT PAPER NUMBER

2667

DATE MAILED: 09/24/2003

14

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/440,148

Applicant(s)

HOU ET AL.

Examiner

Kamran Emdadi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12, 13, 25, 27, and 37-39 is/are allowed.
- 6) ☒ Claim(s) 1-8, 14-22, 28-32, 34-36 and 40-42 is/are rejected.
- 7) ☒ Claim(s) 9-11, 23, 24, 26, 33, 43 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other:

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 8/29/2003 have been fully considered but they are not persuasive for all of the pending claims.
 - Claims: 12, 13, 25, 27 and 37 are allowable and claims 9-11, 23, 24, 26, 33 and 43 are objected to as being allowable and depending upon rejected mother claims.
 - Regarding claim 31, applicant argues the type of intrusive monitoring claimed and the use of probe packets as an intrusive type of measuring. Dobbins does indeed use probe packets to intrusively measure network traffic; however, the argument posed by the applicant regarding "the probe packet is not measuring the results of the probe packet to provide metrics" does not follow the claim language of claim 31 and is thus overcome by the examiner's previous rejection, claims 40-42 have been added to this rejection.
 - Regarding claims 23, 24, 26, 33 and 43, these claims contain allowable subject matter in view of the applicant's arguments written on page 20 of paper no. 13.
 - Regarding claims 1, 14, 17, 28 and 34, in view of the discussion and previous office actions particularly the references pointing to an "intranet", "LAN" and "WAN" and the definitions thereof, the examiner holds the rejections for these independent claims to stand as rejected for reasons stated in paper nos. 3, 5 and 5 and again in the prior advisory action.
 - Regarding claim 8, a more comprehensive rejection has been made and is stated in the action below.

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- Regarding claim 32, the motivation stated by the applicant in the applicant's arguments on pages 25 and 26 point specifically to Dobbins lacking "monitoring and injecting probing packets for intrusively measuring network traffic." This statement has probe packets and intrusive measuring which is inherent to probe packets being sent out into network traffic thus creating an intrusion and hence intrusively measuring network traffic, the purposes argued by the applicant are not contained in the claim language and therefore cannot be considered beyond what is read in the claim.
- Regarding claim 20, applicant's arguments are not persuasive regarding the concern for an intranet.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-8, 14-19, 28-32, 34-36 and 40-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over de la Salle (US Patent No. 6144961) in view of (Dobbins US Patent No. 5485455).
- Regarding claims: 1, 14-19, 28, 29 and 34-36 are, de la Salle teaches: a network with a server 32 (Figure 1) and a probing method used to probe data packets for a set amount of time (Col 4, lines 23-39), with an ongoing communication taking place and the time allotted to measure traffic as a part of an larger ongoing exchange of data

- (Col 4, lines 40-49), in a non-intrusive manner (Col 4, lines 61-64) a network interface device and a connection to a destination device originating from a source device where the devices mentioned are a client computer and a server respectively (Col 9, lines 40-55), a separate intranet for the server communicating to clients external to that intranet (Figure 1), but fails to teach of any plurality of metrics being measured by the server and a processor coupled to the network interface. Dobbins teaches: a network with a processor coupled to a network interface (Figure 5) and metrics measured and calculated throughout the system to establish traffic routing assistance providing a better efficiency (Col 4, lines 20-40). Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to have combined a processor and metrics calculations with a server and client type network using non-intrusive techniques to further, increase efficiency.
- Regarding claim 2, de la Salle teaches: a first packet being transmitted between two nodes as a data segment is detected between the two nodes and an end to the data stream is detected by a lack of packets or after a last packet (Col 18, lines 14-28).
 - Regarding claim 3, de la Salle teaches: an IBM compatible computer and or various subnetworks as types of networks valid for the configuration described herein; however, de la Salle fails to teach IP addresses assigned to the server and client as references for the source and destination addresses used to identify the respective nodes on the network, examiner takes official notice that an IP address is well known as a means to identify a node on a network especially within IBM compatible computers and related subnetworks.

- Regarding claims 4 and 5, de la Salle teaches: a server with active communication to users outside the server's intranet (Figure 1).
- Regarding claim 6, de la Salle teaches: a network interface device and a connection to a destination device originating from a source device where the devices mentioned are a client computer and a server respectively (Col 9, lines 40-55), but fails to teach a header portion of the packet as the portion filtered, Dobbins teaches: a network interface device with a header as the means for lookup with the MAC address as a terminal means for header translation (Col 15, lines 33-37). Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to have used the header as the only means of data captured as a provision for necessary information as not to exceed beyond the required data in order to keep efficiency at a maximum.
- Regarding claims 7, 8, and 30, de la Salle teaches: a router routine for calculating neighboring nodes by address and building this information by SNMP for address resolution and hop count analysis (Col 12, lines 49-67 and a RIP table entry to assist in calculating hop count (Col 13, lines 1-5), the process continues to account for updating probe objects 52 in the database for routing information stemming from the router configuration, such that fresh objects are modified and given a time trigger for keeping accurate topology information (Col 13, lines 45-55).
- Regarding claims 31, 32 and 40-42 de la Salle teaches: a probe computer that probes the network (Figure 2) but fails to teach of intrusive or probing packets being added to the regular flow of data in a respective network. Dobbins teaches: a probe packet

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used on a connection establishment determination network arrangement. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to have combined the use of probe packets on a network as an effective means to track packets on a network.

4. Claims 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over de la Salle (US Patent No. 6144961) in view of (Dobbins US Patent No. 5485455) and further in view of Bhaskaran (US Patent No. 5963540).
- Regarding claims 20-22 de la Salle teaches all a network with a server 32 (Figure 1) and a probing method used to probe data packets for a set amount of time (Col 4, lines 23-39), with an ongoing communication taking place and the time allotted to measure traffic as a part of an larger ongoing exchange of data (Col 4, lines 40-49), in a non-intrusive manner (Col 4, lines 61-64) a network interface device and a connection to a destination device originating from a source device where the devices mentioned are a client computer and a server respectively (Col 9, lines 40-55), a separate intranet for the server communicating to clients external to that intranet (Figure 1), but fails to teach of a second network server used to communicate on a second network connection while communicating the above parameters and signaling between the two servers. Bhaskaran teaches: a conventional network with two servers (Figure 1) with networked links between the two servers on an IP network (Col 1, lines 15-24). Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to have combined the conventional network configuration of two servers with the above embodiment in order to establish a

conventional topological configuration for providing added services to for flexible enhancement purposes.

Allowable Subject Matter

5. Claims: 12, 13, 25, and 27 are allowed for reasons specified in paper no. 3.
6. Claims: 37-39 are allowed for reason specified in paper no. 13.
7. Claim 9-11, 23, 24, 26, 33 and 43 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
8. The following is a statement of reasons for the indication of allowable subject matter:

The claims 9-11, 23, 24, 26, 33 and 43 are allowed for reasons specified in the applicant's arguments paper no. 13.
9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kamran Emdadi whose telephone number is (703) 305-4899. The examiner can normally be reached between the hours of 8am and 5pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chi Pham, can be reached at (703) 305-4378. The fax phone numbers for the organization where this application or proceeding is assigned is (703) 872-9314 for regular communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

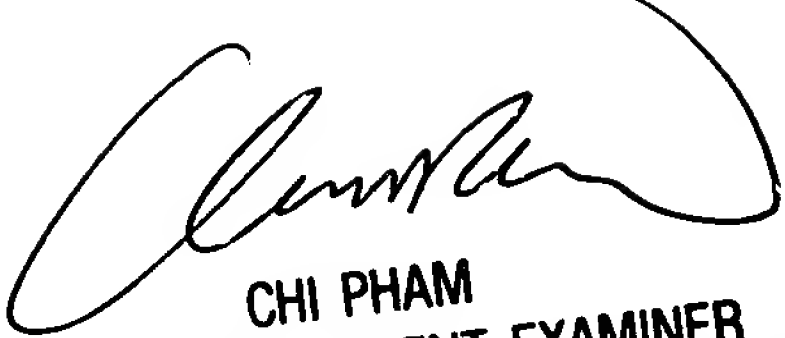
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Kamran Emdadi

09/20/2003


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